

MINUTES OF THE COMMISSION FOR HUMAN RIGHTS- APRIL 28, 2005

A meeting of the Commission for Human Rights was held in the agency conference room on Thursday, April 28, 2005. Present at the meeting were Commissioners Iraida Williams, Dr. John Susa, Camille Vella-Wilkinson, Alton W. Wiley, Jr., Randolph Lowman and Joaquin F. Gomes. Absent was Commissioner Jean Stover. The Chairperson, Commissioner Susa, called the meeting to order at 9:05 a.m.

A motion was made by Commissioner Williams to accept the March 31, 2005 minutes. The motion was seconded by Commissioner Vella-Wilkinson and carried.

Status Report: Michael D. Évora, Executive Director-

A written report was handed out - Attached - new information in bold print

Case Production Report - Attached

Aged Case Report - Attached

Outreach Report - Attached

STATUS REPORT - COMMISSIONERS-

GENERAL STATUS: Commissioner Vella-Wilkinson presented a certificate to Michael D. Evora and one to the staff for eliminating the backlog of aged cases. The certificate for Mr. Evora also recognized his leadership. She also presented one to Frank Gaschen for his ability to solve problems, his meticulous use of legal procedures and his successful enforcement efforts.

Commissioner Vella-Wilkinson reported that Gloria Hole would like to be considered for the Commissioner position.

Commissioner Meeting -2- April 28, 2005

OUTREACH: Commissioner Vella-Wilkinson participated in a rally for Equality in marriage. Also, Commissioner Vella-Wilkinson attended the Labor & Employment Conference. Commissioner Vella-Wilkinson will also conduct cross training for the Human Resource Management Association.

STATUS REPORT - LEGAL COUNSEL, Cynthia M. Hiatt and Francis L Gaschen

LITIGATION: report attached. New information in bold print

LEGISLATION: Discussed

REGULATIONS: No action at this time.

HEARING SCHEDULE: Discussed

DECISIONS: Commissioner Susa, Vella-Wilkinson and Lowman discussed D'Abbracchio vs. Providence School Committee et. al and found that the complainant did not prove that the respondents discriminated against her because of her disability nor that the respondents retaliated against her for filing a charge of discrimination.

The meeting adjourned at 10:00 a.m. The next regular meet-ing of the Commission is scheduled for Thursday, May 26, 2005 at 9:00 am.

Respectfully Submitted,

Michael D. Évora

Executive Director

Notes taken by: B. Ross

EXECUTIVE DIRECTOR'S

REPORT TO COMMISSIONERS

APRIL 28, 2005

I. BUDGET

Theo Toe, the Commission's Budget Analyst, has indicated that the negative federal fund balance brought to light in FY 2004 should be eliminated by the end of this fiscal year.

According to Mr. Toe, the Commission is performing well within the budget allocation for this fiscal year.

Per the 2005 Appropriations bill (H-5270):

	FY 2005	FY 2005	FY 2006
	(Enacted)	(Revised)	(Enacted)
State	984,444	989,299	979,397
Fed.	239,300	213,808	269,705
Total	1,223,744	1,203,107	1,249,102

***Compare FY 2004 Actual: 1,101,287**

The House Finance Committee heard the Commission's 2006 Budget

on March 10. Frank and I were present to answer any questions and give a brief overview of the Commission's progress. Smooth sailing.

II. FEDERAL CONTRACTS

EEOC – The FY 2005 contract is for 328 cases. As of 4/11/05, according to EEOC Project Director Marlene Toribio, we have closed 163 co-filed cases for EEOC FY 2005; we must close 165 by 9/30/05 to complete the contract. We will be given the opportunity to request an upward or downward modification in July, after the close of the third quarter.

HUD –For FY 05, according to HUD Project Director Angela Lovegrove, we have taken in 30 new housing charges, XX of which are co-filed with HUD. In that same period, we have processed XX housing cases, XX of which were co-filed.

III. PERSONNEL

Jason Flanders, who served as an Investigative Intern at the Commission for the past several years, was the successful candidate for the Investigator position vacated by Allison Cote when she became Sr. Compliance Officer. He formally began state service on March 18.

IV. OUTREACH – See attached report.

V. GENERAL STATUS

●Meetings with staff members – I continue to meet with individual investigative staff members on a monthly basis to monitor case production. In July, I implemented a random “spot check” policy to identify any cases in which action is delayed.

●Case Closures – Refer to attached report. Statistics for the first nine months of FY 05 reveal that, despite our staffing shortages, we have processed nearly as many cases as the full staff had processed by this time last year.

●Aged Cases – Refer to attached report. Progress continues to be made on decreasing the aged caseload. The Commission successfully reduced the aged caseload by 81.2% (from 85 to 16 cases) in EEOC FY 04. Continued progress in this area should result in having no aged cases in investigation by the end of next month. (After Commissioners rule on cases today, there will only be one (1) aged case in investigation.)

●Commissioner (Re)Appointments – A representative of the Governor’s Office has indicated that the Governor has submitted the name of Alberto Aponte Cardona for confirmation by the Senate to fill one of the prospective Commissioner vacancies. (Cardona’s résumé was submitted by Cmsr. Vella-Wilkinson at last year’s meeting with

Deborah Smith).

- **Miscellaneous**

- General Progress:**

Overall Case Inventory – The Commission had over 1000 cases in its inventory at the end of fiscal 1998. That number has steadily decreased, and the Commission ended FY 2004 with 602 cases in inventory. As of 4/11/05, there were 395 cases in inventory.

Enforcement Efforts – In addition to the well-noted post-Decision & Order enforcement activities undertaken in the past year, the Commission also is engaging in more proactive “enforcement” activities during investigation. Specifically, the Commission has issued five (5) subpoenas to respondents since the last Commission meeting. Legal Counsel Frank Gaschen has been able to resolve several of them, with respondents agreeing to provide the requested information.

-The Performance Audit by the Department of Admin./Bureau of Audits has been completed. Mary Murphy, who conducted the audit, has indicated that she is in the process of finalizing the report based on input from her superiors. We should receive a draft shortly.

-New computers – As reported last month, the Commission has purchased new computers for the entire staff. A glitch with securing the proper licensing agreements temporarily halted the installation process. I expect the process to resume within a week; a member of

the state's IT staff will provide assistance.

-Two grievances were filed against the Commission related to 1) interpreting services provided by staff, and 2) payment of Union dues by temporary employees (Jay Flanders and Susan Pracht). Both grievances were denied after a third-level hearing (held on October 19). The Union has appealed the denial of the second grievance; arbitration is scheduled to be held in October.

Respectfully submitted,

Michael D. Évora
Executive Director

Attachments

RHODE ISLAND COMMISSION FOR HUMAN RIGHTS

AGED CASE REPORT*
(EEOC FY 2003)

DATE TOTAL CASES STAYED CASES TOTAL LESS STAYED

11/25/02 158 9 149

12/20/02 148 9 139

1/24/03 139 9 130

2/24/03 125 9 116

3/25/03 115 9 106

4/22/03 105 9 96

5/23/03 93 9 84

6/25/03 86 9 77

7/23/03 82 9 73

8/28/03 69 9 60

9/23/03 66 9 57

9/30/03 63 9 54

***Figures reflect open cases filed between July 1, 1987 and June 30, 1998**

Aged case load reduced in EEOC FY 2003 by 63.8%

RHODE ISLAND COMMISSION FOR HUMAN RIGHTS

AGED CASE REPORT*

(EEOC FY 2004)

DATE TOTAL CASES STAYED CASES TOTAL LESS STAYED

10/28/03 85 12 73

11/28/03 71 12 59

12/26/03 62 12 50

**(32 investigation;
18 hearing/conciliation)**

1/28/04 54 12 42

**(27 investigation;
15 hearing/conciliation)**

2/25/04 48 12 36

**(20 investigation,
16 hearing/conciliation)**

3/19/04 44 12 32

**(18 investigation,
14 hearing/conciliation)**

4/26/04 40 12 28

**(15 investigation,
13 hearing/conciliation)**

5/26/04 39 12 27

**(15 investigation,
12 hearing/conciliation)**

6/22/04 34 9 25

**(13 investigation,
12 hearing/conciliation)**

7/9/04 28 9 19

**(9 investigation,
10 hearing/conciliation)**

7/28/04 28 9 19

(9 investigation,

10 hearing/conciliation)

9/23/04 16 1 15

(5 investigation,

10 hearing/conciliation)

***Figures reflect open cases filed between July 1, 1987 and June 30, 1999**

Aged case load reduced in EEOC FY 2004 by 81.2%

AGED CASE REPORT*

(EEOC FY 2005)

DATE TOTAL CASES STAYED CASES TOTAL LESS STAYED

10/12/04 26 2 24

(8 investigation,

16 hearing/conciliation)

11/18/04 21 2 19

(7 investigation,

12 hearing/conciliation)

12/7/04 18 2 16

(5 investigation,

11 hearing/conciliation)

1/7/05 17 2 15

**(5 investigation,
10 hearing/conciliation)**

2/8/05 14 1 13

**(4 investigation,
9 hearing/conciliation)**

3/4/05 13 1 12

**(3 investigation,
9 hearing/conciliation)**

4/7/05 12 1 11

**(2 investigation,
9 hearing/conciliation)**

5/6/05 11 1 11

**(1 investigation,
9 hearing/conciliation)**

6/

7/

8/

9/

***Figures reflect open cases filed on or before September 30, 2000**

Aged case load reduced in EEOC FY 2005 by XX %

OUTREACH – FY 05

RI COMMISSION FOR HUMAN RIGHTS

DATE TRAINER(S) TOPIC LOCATION/

GROUP NUMBER

ATTENDING

7/27/04

Swindell

Pracht Fair Housing Crossroads

N. Kingston 2 reps

7/28/04

Évora

Lovegrove

Toribio Commission Overview

(Fair Empl./Fair Hsng.) Progreso Latino

Institute for Labor Studies & Research 3 reps

8/3/04

Swindell

Pracht Fair Housing Urban League –

Transitional Program. for Teens 6

8/31/04

**Lovegrove Fair Housing Winchester Park Hsng. Devel. – East
Providence 8 (6 residents, 2 HRC staff)**

9/2/04

Palazzo Commission Overview

(Fair Empl./Fair Hsng.) WOON Radio Listening Audience

9/13/04 Swindell

Pracht Fair Housing Q and A Welcome Arnold Shelter—RICH Housing

Locator System Presentation (Cranston) 6

9/14/04

Exhibition Fair Housing/Equal Employment “Bringing Housing and Employment Together”—Providence (sponsored by RICH) 100

9/21/04 Lovegrove

Pracht Fair Housing Shelter and Housing Providers Network—Providence 25

9/25/04 Lovegrove

Swindell Employment and Housing Discrimination RI Heritage Festival – State House Lawn Visitors to Info. Table

9/27/04

Swindell

Pracht Fair Housing Welcome Arnold Shelter—Cranston 14

9/28/04 Swindell

Pracht Fair Housing Macaulay Village—Providence 6 (5 residents, 1 staff)

11/16/04

Lovegrove

Pracht Fair Housing Housing Network of RI—Providence 15 (1 staff)

11/23/04

Gardner

Pracht Fair Housing Kent Center-Warwick 10

12/13/04

Gardner

Pracht Fair Housing Welcome Arnold Shelter--Cranston 7

1/10/05 Lovegrove Fair Housing

(Consolidated Plan—City of Providence) Fox Point Boys and Girls Club—Providence

2/18/05 Christy Sexual Harassment Loans for Homes—East Greenwich, RI 25

4/04/05 Lovegrove Coffee Cup Salute NBC 10 Viewing Audience

4/04/05 Lovegrove Jim Vincent Show Cox Cable Public Access Viewing Audience (8 airings on Public Access)

4/06/05 Christy RI College School of Social Work (Sexual Harassment)—“Social Work and the Law” class—Professor Laureen D’Ambra RI College—Providence, RI 20

4/16/05 Evora Cape Verdean Community Conference (Equal Employment/Fair Housing) Tolman High School—Pawtucket, RI 300

4/22/05

Gaschen 18th Annual Labor & Employment Law Conference – Presentation on benefits of filing with Commission & pursuing case under state (vs. federal) law W. Alton Jones Campus - URI +/- 120

4/28/05

Lovegrove

Pracht Fair Housing Seminar and Lunch Meeting City of Newport Planning Department—Newport RI

45

4/28/05

Evora

**Pracht “The Letter” film sponsored by Housing Network of RI URI
Providence Campus 22**

5/07/05 Lovegrove

Housing Fair (Fair Housing) East Providence RI 40

To: Michael Évora

From: Cynthia Hiatt and Frank Gaschen, Legal Counsels

Re: Litigation

Date: April 28, 2005

Recent developments are in bold.

**American Legion v. John B. Susa, Camille Vella-Wilkinson and Jean
Stover in their official capacities and Cote, Stifano and Potter**

**The respondent appealed the decision in favor of complainants and
moved for a stay of the Commission decision and order. The parties
agreed to a consent order that the enforcement of the Commission
order would be stayed during appeal and that respondent would not
dispose of its assets during appeal. The decision on attorney’s fees
issued. The Commission has filed the administrative record with the
court. The parties are circulating a proposed briefing schedule.**

Gaffney v Town of Cumberland et al

The respondent appealed the Commission decision. The parties and

the Commission filed briefs. The case was assigned to Judge Savage. Judge Savage held a status conference with the attorneys, including Commission counsel, on January 21. Judge Savage indicated that she is close to issuing a decision but wished to give the parties an opportunity to discuss resolution. The attorneys for the complainants and respondents plan to discuss the case. Another status conference was scheduled with Judge Savage on February 14; it has been put on hold because Mrs. Gaffney was out of state. The complainant will be submitting an offer to the respondents soon. Counsel called complainant's attorney on 4/21.

Hiroi v. Bodell, et al.

On April 13, 1996, complainants filed a charge of familial discrimination in the rental of housing. The respondents elected and a Superior Court case was brought on behalf of the complainants by the Attorney General's office. That case was ultimately dismissed for want of prosecution on April 15, 2004. On April 14, 2005, we became aware of the dismissal. A motion to re-instate the case has been filed. Both the AG and the Hiroi family have been notified. Hearing is scheduled for 5-17-05.

Joint v. DeMarkey and Rhode Island Commission for Human Rights

The individual respondent filed an appeal of the Commission Decision and Order. The Commission issued the decision on attorney's fees. The respondent filed an amended appeal to include its appeal of the Commission Decision on Attorney's Fees. The

Commission has filed the administrative record. The parties have agreed to stay the Commission's decisions pending appeal. The parties have agreed to a briefing schedule, Mr. Joint's brief is due June 1, the Commission brief and the complainant's brief are due 30 days after we receive Mr. Joint's brief.

King v. City of Providence Police Dept.

This is a case in which the Commission issued a decision finding that the City of Providence had denied Mr. King a position as a police officer because of his age. The Commission had not yet determined damages when the FUD's decision came down, so the Commission decision was not final and the respondent had the opportunity to have the case heard in Superior Court. The respondent elected to have the matter heard before the Superior Court. The complainant conducted a record deposition of Cynthia Hiatt on March 12. The respondent may schedule a further deposition of Ms. Hiatt. The parties have also deposed former Commission employee Nancy Kolman. Ms. Hiatt was under subpoena to testify at the trial, but the trial has been postponed. At the last minute, the Judge agreed to hear complainant's motion for summary judgment, which argued that the Court should disallow respondent from having a hearing in court because the hearing at the Commission was complete before the FUD's decision came down. The court denied the motion for summary judgment. The complainant had planned to appeal; it is unclear whether an appeal was filed. Counsel has made several

attempts to contact Mr. King's attorney on the status of the case.

Moore v. Tri-Way Security

Respondent has filed for bankruptcy. Outstanding is a motion for legal fees to complainant's attorney. We will prepare this for ruling.

RICHR on behalf of Canlas v. Bay Management Co., Oxbow Associates & Tammy Nelson

Suit in the name of the Commission was brought in Newport County Superior Court on behalf of Mr. Francisco Canlas and his brother. The suit alleges they were discriminated against in housing because of race and ancestral origin. The Commission is the plaintiff because our contract with HUD provides that we bring suit if neither private counsel nor the AG will represent the plaintiff. All defendants were served with the complaint and a Request for Production of Documents. The defendants answered the complaint. Interrogatories were served. The case was settled; documentation is being prepared to dismiss the complaint.

RICHR and Lovegrove v. Escolastico

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-24-05. Service of the complaint will be made once respondent can be located in Florida.

RICHR and Morin v. Teofilo Silva, et al.

A complaint for enforcement, together with a Request for Production

and Request for Admissions, was filed on 3-24-05. Service of the complaint will be made once respondent can be located.

RICHR and Rossi v. Attruia

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 3-29-05. Defendant to be served. We are having some difficulties with service. Hearing on May 17, 2005.

RICHR and Scurry v. C & H Investments, et al.

A complaint for enforcement, together with a Request for Production and Request for Admissions, was filed on 9-1-04. Defendants were served on 9-13-04. No answer was filed, the defendants defaulted and judgment entered. Counsel has spoken with an attorney to resolve this claim. The attorney does not represent the Costas but is a friend who was acting as a conduit for settlement negotiations. The offer was sent to the complainants, they rejected it. An Exemplified copy of the Judgment was obtained. Action will be brought against the respondents in Florida as they refuse to comply with the Decision.

RICHR and Solis v. Lombardo

The respondents filed an appeal of the Commission decision that found discrimination. The Commission filed the administrative record. The parties agreed on a briefing schedule. The respondents' appeal was dismissed for lack of action. A petition to enforce the

Decision of the Commission was filed, answer for defendants filed and the matter was scheduled for hearing and then continued. The complainant was paid and we are in the process of negotiating resolution of relief to the Commission. Hearing on May 17, 2005.

RICHR and Texeira v Biernacki

Judge Clifton dismissed the appeal as untimely filed. The R.I. Supreme Court denied a petition for certiorari. The complainant's attorney and the Commission filed a Petition to Enforce as a new case. The respondent was served. Petition for Enforcement granted on September 22, 2004. The Judgment was stipulated to, with terms of payment in the accompanying Order. Payment was due to the State of Rhode Island on October 11. While the CP has been paid, the Commission has not yet been paid. Negotiations on extended payment plan commenced. Execution ordered as respondent failed to comply with agreement. Service of execution upon the respondent has been difficult to effectuate.

RICHR and Zeigler v. Laura Sitrin, Finance Director of the city of Newport

The Commission found discrimination in 1988. The respondent filed an appeal but did not take action on the appeal. Since the court dismisses cases in which no action has been taken in five years, it appears that the appeal has been dismissed. The Petition for Enforcement was filed and discovery requests have been drafted.

Service of suit was accepted by counsel for city. Answer filed. The matter was assigned to January 14, 2005. Negotiations with the city are ongoing to resolve its compliance with the Decision of the Commission. The complainant was paid. All remaining issues were resolved in Court on 4-15-05, and the City has been ordered to conduct training.

Tucker v. Blue Cross

The complainant filed an administrative appeal of the Commission's finding of no probable cause. The Commission had received stipulations extending the time in which it must file the record as the complainant had represented that the parties were discussing settlement. The Commission is currently seeking a stipulation on the record to be filed; two of the three attorneys have signed it and we are waiting for the third. Two reminders sent to the other attorney. The administrative record was filed in Court.

Wellborn v. Spurwink/Rhode Island et al. (R.I. Supreme Court 4/25/05)

In this case, the plaintiff claimed pregnancy discrimination. The plaintiff claimed that the employer required her to leave early on pregnancy leave even though she was still capable of performing her job, denied her a full-time position because of her pregnancy and constructively terminated her. The constructive termination claim was based on her treatment after her return to work; the employer no longer gave her a guaranteed number of hours and no longer paid her benefits. The case went to a jury trial in Superior Court. The jury

found for the plaintiff. The employer appealed, saying that the trial court should have overturned the jury verdict or granted a new trial. The Rhode Island Supreme Court affirmed the Superior Court and held that the plaintiff submitted sufficient evidence of discrimination for a reasonable jury to find discrimination. This is a good case as it supports a jury verdict when there is conflicting evidence as to the employer's motivations. It also eases the sting of the prior case, *Casey v. Portsmouth*, in which the Court found summary judgment for the employer (thus denying the plaintiff the chance to have a jury trial) in a case where the employer's purported reason for its action was subjective and the plaintiff was the most qualified applicant, according to objective criteria. This case indicates that the Court will be examining the facts of each case.

As a historical footnote to this case, the Commission issued a "FUD's" right to sue in this case in November 2000. The Commission had found probable cause and the respondent elected to go to Superior Court. At that point, the complainant had no attorney.